

ARKANSAS SUPREME COURT

No. CR 07-241

ALBERT KIETH SMITH
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered May 17, 2007

PRO SE MOTION FOR EXTENSION
OF TIME TO FILE APPELLANT’S
BRIEF AND PRO SE MOTION FOR
COPY OF RECORD [CIRCUIT COURT
OF BENTON COUNTY, CR 2004-84,
HON. TOMMY J. KEITH, JUDGE]

APPEAL DISMISSED; MOTIONS
MOOT.

PER CURIAM

In 2005, Albert Kieth Smith, appellant herein, was found guilty by a jury of capital murder and kidnapping and sentenced to life imprisonment without parole and forty years’ imprisonment in the Arkansas Department of Correction. This court affirmed. *Smith v. State*, 367 Ark. 274, ___ S.W.3d ___ (2006). Subsequently, appellant timely filed in the trial court a petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1. The trial court denied the petition and appellant lodged a pro se appeal here of that order.

Now before us is appellant’s pro se motion for extension of time to file appellant’s brief and “Motion for Request of Copy of Additional Appeal Record.” We need not consider these motions as it is apparent that appellant could not prevail if the appeal were permitted to go forward. Accordingly, we dismiss the appeal and hold the motions moot. This court has held that an appeal from an order that denied a petition for postconviction relief will not be permitted to proceed where

it is clear that the appellant could not prevail. *See Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (per curiam).

Arkansas Criminal Procedure Rule 37.1(d) requires that the Rule 37.1 petition be verified, and that an unverified petition may not be filed without leave of the court. *Morris v. State*, 365 Ark. 217, ___ S.W.3d ___ (2006) (per curiam); *Shaw v. State*, 363 Ark. 156, 211 S.W.3d 506 (2005) (per curiam). The verification requirement for a petition seeking postconviction relief is of substantive importance to prevent perjury. *Boyle v. State*, 362 Ark. 248, 208 S.W.3d 134 (2005) (per curiam); *Knappenberger v. State*, 278 Ark. 382, 647 S.W.2d 417 (1983).

Pursuant to Ark. R. Crim. P. 37.2(c), if an appeal was taken, a petition verified by the petitioner under the rule must be filed in the circuit court within sixty days of the date the mandate was issued by the appellate court. The filing deadlines imposed by this section are jurisdictional in nature, and if they are not met, a trial court lacks jurisdiction to consider a Rule 37.1 petition. *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989). Moreover, the timely filing of an unverified petition does not toll or waive the jurisdictional limitations to allow the filing of a verified petition outside of the sixty-day limit. *Shaw, supra*; *Worthem v. State*, 347 Ark. 809, 66 S.W.3d 665 (2002). Thus, the jurisdictional defect of a timely unverified petition could not be cured by filing a subsequent verified petition outside the sixty-day limit. *Shaw, supra*; *Worthem, supra*.

Here, the petition did not contain appellant's verified signature as required by Rule 37.1(d). Appellant later filed a "Certificate of Verification" that contained appellant's verified signature. However, the verification was filed outside of the sixty-day limit, and had no effect on the timely, but unverified, petition. Thus, the trial court lacked jurisdiction to consider the petition.

Appeal dismissed; motions moot.